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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,365	01/23/2004	Mark Turnbull	115761-332250	4466

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EXAMINER

SOOHOO, TONY GLEN

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 03/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/762,365

**Applicant(s)**

TURNBULL ET AL.

**Examiner**

Tony G. Soohoo

**Art Unit**

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4-23-04</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 6, 7 and 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Furlani 5797676.

Furlani discloses in figure 3 an apparatus and method of use using and supplying aggregate via a belt 4 and water from a water proportioner 14 to a discharge hopper 16 and dispensing cement from a centered outlet 13 into the cover 54 of the hopper to produce cement.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-3, and 14-16, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Furlani 5797676 in view of Brown 4963031 (cited on PTO 1449).

The Furlani reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of the provision of a flexible bottom end

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connecting the cement discharge pipe to the hopper (claims 2-3) with a steel section, and the provision of an articulated palate to control the outlet of the discharge hopper.

The Brown '031 reference discloses the connection of inlet pipes may utilize a flexible section, column 5, lines 1-5, and the use of an actuated plate flow control gate 22a, column 5, lines 13-17.

In view of the teaching of the Brown reference that one may utilize such connections and flow control structures at the inlet and outlet of a hopper, it is deemed that it would have been obvious to one of ordinary skill in the art to provide for the connections of the inlet and outlet with a respective flexible section and actuated control gate so ease construction of the connection of the inlet elements and as to better control the flow of material from the outlet.

With regards to the construction material of the discharge pipe, the use of material of steel is old and well known in the construction of piping. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Furlani 5797676 in view of Rikker 4368984.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Furlani 5797676 in view of Brown 4963031 and in further view of Rikker 4368984

The Furlani reference, or as modified by Brown, discloses all of the recited subject matter as defined within the scope of the claims with the exception of provision of a wear liner in the hopper (claim 5) or the discharge pipe (claim 4).

The Rikker reference teaches that one may utilize a liner 92a, 94a, in a hopper and dispensing device. Accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to provide for walls of the device such as the hopper wall and pipeline wall with wear liners such that the device is more easily repairable and more durable.

7. Claim 8-10, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Furlani 5797676 in view of Sims 4568239 (cited on PTO 1449).

The Furlani reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of a means for moving the outlet of the hopper relative to a mixing truck.

The Sims reference teaches that a frame assembly 82, 70 may move a hopper 34 to provide a proper dispensing position into a truck 10.

In view of the teaching of Sims, it is deemed that it would have been obvious to one of ordinary skill in the art to further provide a means to move the hopper outlet so that it may be more effectively positioned to dispense into a mixer truck.

8. Claims 11-13, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Furlani 5797676 in view of Guntert, Jr. et al 6527428.

The Furlani reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of a dust collector and a dust hood to prevent particles from coming out the outlet of the hopper.

The reference to Guntert, Jr, teaches that a hopper and loading system may be provided with a dust hood and dust collector H for the purposes of collecting dust from the device during operation, column 8 last paragraph, column 10, lines 39-44.

In view of the teaching of Guntert, Jr., it is deemed that it would have been obvious to one of ordinary skill in the art to provide for the device and operation of the Furlani device with a dust hood and dust collector H for the purposes of collecting dust from the device during operation.

***Conclusion***


9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Inoue et al 5433521, Milek 5785421, Smith et al 5171121, Gerlach 4579496, and Mathis et al 4395128.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7-5PM, Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tony G Soohoo  
Primary Examiner  
Art Unit 1723